

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES KIMMEY,

Defendant.

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CASE NO. 8:10CR69

TENTATIVE FINDINGS

The Court has received the Presentence Investigation Report ("PSR") and the Defendant's objections thereto (Filing No. 33). The government adopted the PSR (Filing No. 32). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Defendant objects to the 2-level enhancement in ¶ 25 under U.S.S.G. § 2D1.1(b)(1) for possession of a dangerous weapon. The Defendant argues that if he is successful with respect to this objection, he will qualify for the safety valve. The objection will be heard at sentencing. The burden is on the government with respect to the objection to ¶ 25, and if the safety valve is addressed the burden will be on the Defendant. The standard is by a preponderance of the evidence.

IT IS ORDERED:

1. The Defendant's objections to the PSR (Filing No. 33) will be heard at sentencing;
2. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion

challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

3. Absent submission of the information required by paragraph 2 of this Order, my tentative findings may become final; and

4. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 9th day of August, 2010.

BY THE COURT:

s/ Laurie Smith Camp
United States District Judge